

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**DAVID T. and LELAND J.
BARCHANOWICZ,**

Plaintiffs,

v.

**FREIGHTLINER TRUCKS OF DOTHAN,
INC., DAIMLERCHRYSLER SERVICES
NORTH AMERICA LLC, et al.,**

Defendants.

CASE NO. 1:05-CV-1232

JOINT MOTION TO STAY PROCEEDINGS

COME NOW David T. Barchanowicz and Leland J. Barchanowicz (the “Plaintiffs”), DaimlerChrysler Financial Services Americas LLC f/k/a DaimlerChrysler Services North America LLC (“DFS”), and Commercial Recovery Systems, Inc. (“CRS”) and jointly request that this Court stay the proceedings in this case. In support thereof, these Movants represent unto this Court as follows:

1. On or about January 31, 2006, this Court entered a Uniform Scheduling Order setting out various discovery deadlines and setting this case for trial on January 8, 2007.
2. On or about May 1, 2006, DFS filed a Motion to Compel Arbitration.
3. That Motion to Compel Arbitration is still pending before this Court.
4. On or about May 19, 2005, the Plaintiffs propounded various requests for production of documents on DFS and CRS.
5. On or about June 15, 2006, DFS objected to those discovery requests on the grounds that its Motion to Compel Arbitration was still pending and because any discovery

should be undertaken in an arbitration forum. CRS likewise objected to the discovery requests on the grounds that any discovery should be undertaken in an arbitration forum.

6. On or about November 3, 2006, the Plaintiffs filed a Motion to Compel Production of the documents they had previously requested.

7. On or about November 6, 2006, this Court denied that Motion to Compel Production and directed the parties to hold a conference within 20 days to discuss their discovery issues.

8. The parties have complied with that order.

9. Although the Defendants continue to maintain that any discovery should take place in an arbitration forum and although the Plaintiffs continue to maintain that they are entitled to their requested document production and reserve the right to seek Court intervention compelling the production of said documents at a later date, the parties all agree that should DFS succeed on its motion to compel arbitration, this Court's scheduling order (and any discovery issues) will be moot.

10. Additionally, although the Plaintiffs continue to contest the merits of DFS's Motion to Compel Arbitration, the parties have begun negotiating an alternative "off contract" arbitration agreement. A successful conclusion to those negotiations will also moot this Court's scheduling order (and any discovery issues).

11. Under the scheduling order, the parties will be required to spend time and expense complying with the requirements of that order even though those efforts and expenses may not be necessary if this Court ultimately grants the motion to compel arbitration, thereby severely prejudicing and irreparably harming the parties. See generally, Booth v. Hume Publishing, Inc., 902 F.2d 925 (11th Cir. 1990) ("[T]he purpose of the Federal Arbitration Act

was to relieve congestion in the courts and to provide parties with an alternative method for dispute resolution that would be speedier and less costly than litigation." (Emphasis added.) (Quoting, O.R. Securities v. Professional Planning Assoc., 857 F.2d 742, 745-46 (11th Cir.1988)); Allstar Homes, Inc. v. Waters, 711 So. 2d 924 (Ala. 1997) ("The reputed informality and the relative speediness of an arbitration procedure are achieved by severely limiting discovery....").

12. Therefore, these Movants jointly request that this Court stay the proceedings in this case.

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